IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 72 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

BHOJRAJ SURENDRAPAL

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following two questions under section 256(2) of the Income Tax Act,1961 (hereinafter referred to as 'the Act'), for the opinion of this Court:

"(1) Whether, the interest paid to the HUF account is not disallowable under sec.40(b) of the Income-tax Act,1961?"

"(2) Whether in view of the recent Full Bench decision of the Gujarat High Court in the case of V.Chhotalal & Company (150 ITR 276) the Appellate Tribunal was right in law in granting the allowance of interest paid to the HUF account which was a partner in the assessee firm ?"

2 Heard Mr.B.B.Nayak, learned Counsel for the revenue. Though served none appears for the assessee.

3 For the assessment year 1982-83, the assessing officer disallowed a sum of Rs.51,909/- being interest paid by the assessee firm to two partners representing the respective HUFs in the capacity of karta in the partnership firm. The assessee had claimed the deduction on the basis of decision of this Court in the case of Sajjanraj Diwanchand, 126 I.T.R.654, but the same had not been accepted by the department. The assessing officer disallowed the interest paid. The C.I.T.(Appeals) and the Tribunal following the decision of Sajjanraj Diwanchand (supra) upheld the claim made by the assessee and hence this reference at the instance of the revenue.

4 The decision of this Court in the case of Sajjanraj Divanchand(Supra) has been held to be no longer good law by the Full Bench of this Court in the case of Chhotalal & Co.,150 ITR 276. Thereafter, the Supreme Court in the case of Brij Mohan Das Laxman Das vs. C.I.T.(1997) 223 ITR 825 and Suwalal Anandilal vs.C.I.T. 224 ITR 753 has held that any interest paid to a partner regardless of the capacity in which such a person is a partner would be hit by provisions of Section 40(b) of the Act.

5 Following the ratio of the aforesaid decision we hold that the Tribunal was in error in holding that the interest paid to HUF account was not disallowable u/s.40(b) of the Act. Both the questions referred to us are therefore answered in the negative i.e. in favour of the revenue and against the assessee.

6 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta, J)

m.m.bhatt